No. 791

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CHARLES ELMORE CROPLEY
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, a Corporation,
Petitioner,

vs.

HELENE HEILBRONNER, Guardian of the Person and Curatrix of the Estate of THEODORE S. HEILBRONNER,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Eighth Circuit

and

BRIEF IN SUPPORT THEREOF.

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Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 938 (28 U. S. C. A., Sec. 347) 6

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May It Please the Court:

Your petitioner, The Mutual Life Insurance Company of New York, a corporation, respectfully shows to this Honorable Court:

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

On August 26, 1938, the respondent, Helene Heilbronner, guardian of the person and curatrix of the estate of Theodore S. Heilbronner, *non compos mentis*, instituted suit in the Circuit Court of the City of St. Louis, Missouri, to require petitioner to reinstate four policies of life insurance

for $5,000.00 each issued by petitioner in January and February, 1930, to and upon the life of Theodore S. Heilbronner, which policies petitioner asserted had lapsed for the nonpayment of certain premiums due thereunder in 1935 (R. p. 10). In addition, respondent prayed for a return of the premiums which had been paid on these policies since September, 1930 (R. p. 14), on the ground that the insured was totally and permanently disabled from and after that date, and that under the disability benefit of said policies petitioner had agreed to waive the payment of all premiums due under the policies after the insured became totally and permanently disabled and during the continuance of such disability.

The cause was duly removed to the United States District Court for the Eastern District of Missouri (R. p. 17), and on March 7, 1940, that Court entered its finding (R. p. 212) and decree (R. p. 223) in favor of the respondent. An appeal was taken by your petitioner to the United States Circuit Court of Appeals, and that Court, in an opinion rendered on the 10th day of January, 1941 (R. p. 228), affirmed the decree of the District Court, and on the 3rd day of February, 1941, overruled a petition for a rehearing filed by petitioner in said cause (R. p. 247).

The policies in suit (R. pp. 37-47) were applied for (R. p. 41) and delivered in the State of Illinois, where the insured then resided, and it was conceded that they were controlled by the law of that state.

Each of the policies contained a disability benefit which provided that "If, before attaining the age 60 years and while no premium on this policy is in default, the insured shall furnish to the Company due proof that he is totally and permanently disabled * * * the Company will waive payment of each premium as it thereafter becomes due during such disability" (R. p. 39). Endorsed on each of said

policies was a supplementary disability benefit (R. p. 45), which provided that:

> "If not later than six months after the due date of any premium in default * * * due proof is received by the Company * * * that the insured was totally and permanently disabled * * * when such premium in default fell due * * * the policy will be reinstated without evidence of insurability and the waiver of premium shall be the same as if such default had not occurred."

Respondent alleged (R. pp. 26-27), and the District Court found, that the insured became totally disabled in September, 1930, as the result of a mental impairment (R. p. 215) due to paresis (R. pp. 133, 143-144). It was conceded, however, that no proof of the insured's disability was furnished to petitioner while the policies were in force, or within six months after the lapse of said policies for the nonpayment of the premiums due thereunder in 1935. However, it was contended by respondent—and that contention was upheld by both the District Court (R. p. 221) and the Court of Appeals (R. pp. 234-236)—that under the law of Illinois the insanity of the insured at and prior to such default excused a failure to comply with the requirement and condition of said policies for the furnishing of due proof of insured's disability to the company within six months from the date of such default, and also entitled the respondent to a return of all premiums which had been paid on said policies subsequent to September, 1930, amounting to the sum of $1,726.55 (R. p. 222), after the deduction of certain outstanding policy loans, notwithstanding that no proof of insured's disability had been furnished to petitioner.

B.

REASON RELIED ON FOR ALLOWANCE OF WRIT.

The reason urged by petitioner for the allowance of a writ of certiorari herein is that the Court of Appeals failed to give effect to the law of Illinois as declared by the Illinois Appellate Court for the First District in an opinion rendered on May 29, 1930, in Continental National Bank & Trust Co., Conservator of Joseph L. Spilky, Incompetent, v. New York Life Insurance Co. (Rec. pp. 177-184), in which it was held that the insanity of the insured did not excuse a failure to comply with a condition of the policy for the furnishing to the company of due proof of the total and permanent disability of the insured before the company would be obligated for the disability benefits provided for by the policy and which holding is supported by the holding of the intermediate Appellate Courts of Illinois in Scheiber v. Protected Home Circle, 146 Ill. App. 574; Grand Lodge A. O. U. W. v. Jesse, 50 Ill. App. 101, and Noel v. Modern Woodmen, 61 Ill. App. 597.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Circuit Court of Appeals for the Eighth Circuit, commanding that Court to certify and to send to this Court for its review and determination on a day certain to be therein named a full and complete transcript of the record and all proceedings in Cause No. 11,750 on the docket of said court, entitled "The Mutual Life Insurance Company of New York, a corporation, Appellant, v. Helene Heilbronner, Guardian of the Person and Curatrix of the Estate of Theodore S. Heilbronner, Appellee," and that the judgment of the Circuit Court of Appeals for the Eighth Circuit in said cause may be reviewed by this Honorable Court, and that your petitioner may

have such other and further relief in the premises as to this Honorable Court may seem meet and just.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, a corporation,

By JAMES C. JONES,
LON O. HOCKER,
JAMES C. JONES, JR.,
Counsel for Petitioner.

LOUIS W. DAWSON,
Of Counsel.